IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Inventor(s): David J. Houck et al.
Case: Houck 5-2-1-3 (LCNT/125696)
Examiner: Wu, Jianye
Confirmation #: 2071

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Group Art Unit: 2462

Title: METHOD AND APPARATUS FOR MANAGEMENT OF VOICE-OVER IP COMMUNICATIONS

MAIL STOP APPEAL-BRIEF PATENT
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SIR:

REPLY BRIEF

Appellants submit this Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer, dated October 26, 2011, in the Appeal of the above-identified application.

In the event that an extension of time is required for this amendment to be considered timely, and a petition therefor does not otherwise accompany this amendment, any necessary extension of time is hereby petitioned for.

An Appeal Brief filing fee has been paid. Appellants do not believe that any other fees are due. In the event Applicants are incorrect, the Commissioner is authorized to charge any fees due, including extension of time and excess claim fees, to counsel's Deposit Account No. 50-4802/**ALU/125696**.

REMARKS

Appellant's response to the Examiner's Answer is provided hereinbelow.

Section 10 (Response to Arguments)

In Section 10 (Response to Arguments) of the Examiner's Answer, the Examiner purports to provide answers to the arguments made by the Appellant in the Appeal Brief filed for the above-identified application. Appellant addresses the Examiner's answers hereinbelow.

1. Appellant Disagrees With Examiner's Assertion Regarding The 112, ¶1 Rejection.

On page 25 of the Examiner's Answer, the Examiner writes:

> **(10) Response to Argument**
> The following are Examiner's responses to some of Appellant's arguments.
> For **Appellant's arguments of I** (page 7-9), regarding rejection of claim 1 under 112, first paragraph, Appellant argues the text starting from line 27 in page 6 of the specification discloses the limitation "each of said network paths being associated with respective first gateway egress **interfaces** and a second gateway system IP address".
> In response, **Examiner respectfully disagrees.** The specification text starting from line 27 in page 6 and the relevant Figures showing the first gateway 114 are recited as follows:
> In this framework, **load** balancing is supported by controlling the egress port at the source gateway (i.e., first gateway 114). Since **each egress port** would map into **a unique path** in the IP network 118, the load from source gateway 114 to a destination gateway (i.e., second gateway 116) can be **partitioned into different paths,** resulting in **load** sharing in the network.

As noted in Appellants' Appeal Brief, and herein supplementing the discussion, the rejection of the claims under 112, ¶1 is improper because: (1) the Examiner failed to meet the initial burden as required by the rules; and (2) the Examiner was unable to articulate a reasonable basis, because the Examiner's conclusion is not based on the evidence as a whole.

According to MPEP §2163.04:

> A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367,

> 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

Initially, the Examiner rejected claims 31-32 as follows.

> 5. The following is a quotation of the first paragraph of 35 U.S.C. 112:
> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
>
> 6. Claims 31-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
>
> Claim 31 recites the limitation "using all of the network congestion parameters". There is insufficient support in the specification for this limitation in the claim.
> Claim 32 has the same problem because it depends from claim 31.
> For purpose of continuation of the prosecution, the claims will be interpreted as best understood.

As can be seen, the Examiner simply made a conclusory statement. No evidence was provided, much less evidence, which would preponderate in its weight against the opposing evidence. Accordingly, the Examiner did not establish a reasonable basis to challenge the adequacy of the written description to begin with. Further, as noted in Appellants' Brief, the specification is replete of passages supporting the claimed feature. For example, on page 6, beginning at line 27, the specification discloses:

> In this framework, load balancing is supported by controlling the egress port at the source gateway (i.e., first gateway 114). Since each egress port would map into a unique path in the IP network 118, the load from source gateway 114 to a destination gateway (i.e., second gateway 116) can be partitioned into different paths, resulting in load sharing in the network.

In this case, the phrase: "first gateway egress interfaces" is reasonably ascertainable by those skilled in the art.

From the above passages of the specification and the fundamentals of computer network engineering, an artisan of ordinary skill in the art can discern with a reasonable

degree of clarity and precision the meaning of the phrase: "first gateway egress interfaces."

Further, regarding using all of the network congestion parameter, on page 8, beginning at line 2, the specification provides:

> The first gateway 114 consists of, among other things, a plurality of circuit cards interconnected in a manner so as to facilitate the passing of information packets to and from the network 118 as well as make determinations on the level of congestion on pathways in which said information packets are passed.

Next, on page 14, beginning at line 12, the specification further discloses:

> Note that the rules database 306 reflects the congestion status of the network paths from the local gateway to remote gateways. The opposite direction is handled similarly in the remote gateway. When the admission control module 204_1 is initialized, information about the existing interfaces is determined. [emphasis added].

Further, on page 6, line 32 to page 7, line 7, the specification discloses:

> "The destination gateway 116 receives the RTP packets generated by the source gateway 114 (e.g., at port E2) and addressed to itself. For each RTP stream, the receiver measures call quality statistics like *packet loss ratio, delay and interarrival jitter* for the stream. The measured statistics are sent back to the source gateway 114 periodically in a special field within the RTP packets or in RTCP packets. In one example, these statistics reflect the *network conditions for the path following* (E2-ER1-Network-ER3-E4). Thus, the MBCAC algorithm utilizes the call quality statistics of this flow to derive the congestion status of the directed path, uniquely defined by the source gateway E2, destination gateway pair."

The Examiner was unable to articulate a reasonable basis, because the Examiner's conclusion is not based on the evidence as a whole. In conclusion, The Examiner failed to properly consider the different passages of the specification providing support for the claimed feature.

Appellants have, thus shown that the claims have been erroneously rejected under 35 U.S.C. §112, ¶1.

2. The Specification Clearly Teaches "Congestion Status Parameters" Contrary To The Examiner's Assertion.

On page 28 of the Examiner's Answer, the Examiner writes:

> "It is clear that "congestion status parameters" is not defined in the specification."

Contrary to the Examiner's assertion, the specification clearly teaches "congestion status parameters." In addition to being shown above, the relevant passage is reproduced here for ease of reference.

> Thus, the MBCAC algorithm utilizes the *call quality statistics of this flow to derive the congestion status of the directed* path, uniquely defined by the source gateway E2, destination gateway pair."

As the Examiner correctly stated on page 28 of the Examiner's Answer:

> The specification teaches that "packet loss ratio, delay and interarrival jitter" are simply examples of the "call quality statistics **like**" parameters, not the congestion status parameters as argued by Appellant.

These "call quality statistics" are used to derive the congestion status of the path. For example, on page 2, line 29, the specification provides:

> Packet loss ratio is calculated by the equation A/(A+B) where A is the sum of lost and late packets arriving at the particular gateway along the particular path and B is the total number of successfully received packets arriving at the particular gateway along the particular path.

In view of above disclosure, an artisan of ordinary skill in the art would conclude that the claimed phrase "congestion status parameter" is defined in the specification. Consequently, the prior art fails to disclose expressly or impliedly the claimed features:

> "obtaining, at the first gateway, information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway via a plurality of network paths between the first gateway and the second gateway;
> determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address;"

Appellants have, thus shown that there are missing claimed features not taught or suggested by the cited reference; and thus, the claims have been erroneously rejected under 35 U.S.C. §103(a).

Conclusion

Thus, Appellant submits that all of the claims presently in the application are allowable.

For the reasons advanced above, Appellant respectfully urges that the rejection of claims 1-33 is improper. Reversal of the rejection of the Office Action is respectfully requested.

Respectfully submitted,

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